

## Internal Revenue Service

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### INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR: ASSOCIATE AREA COUNSEL, SB/SE: Area 1  
CC:SB:1

FROM: Donna Welch  
Senior Counsel  
Administrative Provisions and Judicial Practice  
CC:PA:APJP

SUBJECT: Application of Payment

This Chief Counsel Advice responds to your memorandum dated May 17, 2002. You have requested advice with regard to a specific taxpayer; therefore, pursuant to notification provided to your office on May 21, 2002, we are treating your request for significant Service Center Advice as a request for Field Service Advice. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

### LEGEND

Taxpayer =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 5 =  
Year 6 =  
Date 1 =  
Date 2 =  
Date 3 =  
\$a =  
\$b =  
\$c =  
\$d =  
\$e =

\$f =

\$g =

\$h =

### ISSUE

Whether a payment that Taxpayer made in Year 2 should be applied toward Taxpayer's estimated tax liability for Year 2 or toward a penalty owed for Year 1.

### CONCLUSION

In general, if a taxpayer makes an undesignated payment, the Service may apply the payment as it chooses. However, if a taxpayer makes a designated payment, the Service should apply the payment as the taxpayer directs. In the present case, an Appeals Officer determined that Taxpayer designated the payment as an estimated tax deposit for Year 2. Therefore, the Service should treat the payment as an estimated tax payment for Year 2.

### FACTS

On or about April 15 of Year 2, Taxpayer and his spouse filed a joint Federal income tax return for Year 1. The return reported a tax liability of \$a, withholding of \$b, estimated tax payments of \$c, and a balance due of \$d. Taxpayer and his spouse paid the balance due of \$d with the return.

Also on or about April 15 of Year 2, Taxpayer and his spouse made a payment, by personal check, to the Service in the amount of \$e. The check does not note the intended purpose of the payment, and the Service cannot locate any other form of payment designation regarding the check, such as an estimated tax payment voucher.

On or about Date 1, the Service processed the Year 1 joint return. Also on or about Date 1, the Service added an estimated tax penalty of \$f to the Year 1 account of Taxpayer and his spouse. The Service applied \$f of the \$e payment to satisfy the estimated tax penalty and issued a joint refund on Date 2 for the balance, plus interest. The Service paid the refund by a check payable to Taxpayer and his spouse.

Taxpayer has stated he did not know of the refund check, and the back of the refund check was signed only by Taxpayer's spouse. The Service cannot determine whether the check was deposited in a joint account or a separate account.

On or about April 15 of Year 3, Taxpayer filed his Year 2 Federal income tax return. Taxpayer claimed head of household status on the return; therefore, it appears that

the taxpayers were either separated or divorced as of the close of Year 2. On the return for Year 2, Taxpayer claimed the full amount of the \$e payment as an estimated tax payment for Year 2, reported other estimated tax payments of \$g, and included a payment of \$h with the return. On Date 3, the Service notified Taxpayer that he underpaid his Year 2 tax liability by \$e, plus interest.

In Year 5, the Service filed a notice of federal tax lien for Taxpayer's tax liability for Year 2. Taxpayer maintains that he properly designated the \$e payment on April 15 of Year 2 as a payment of estimated tax for Year 2, and that the Service erred in applying the payment against the Year 1 estimated tax penalty. The Service held a Collection Due Process ("CDP") hearing regarding Taxpayer's Year 2 liability. We assume that the issues Taxpayer raised at the CDP hearing were properly within the Appeals Officer's authority to resolve.

In Year 6, the Appeals Officer who conducted the CDP hearing issued an Appeals Case Memorandum and agreed with Taxpayer that the payment of \$e on April 15 of Year 2 was a payment of estimated tax for Year 2. The Appeals Officer concluded that the taxpayer "provided clear evidence that he properly and timely filed the [\$e] estimated tax payment to be applied to [Year 2]...."

Based on the Appeals Officer's determination, the Service applied Taxpayer's payment of \$e against his estimated tax liability for Year 2. The taxpayer then paid the Year 1 estimated tax penalty, plus interest.

## LAW AND ANALYSIS

Section 6654 of the Code imposes a penalty for underpayment of estimated tax by individuals. Section 6654(c) provides that any required payments of estimated tax for a given taxable year must be paid in installments on specified dates. This section provides that the first installment of estimated tax is due April 15 of the taxable year.

Case law establishes that when a taxpayer makes a "voluntary payment" to the Service, the taxpayer has a right to direct the application of the payment to whatever type of tax liability he or she chooses. See Muntwyler v. United States, 703 F.2d 1030, 1032 (7<sup>th</sup> Cir. 1983). The term "voluntary payment" means any payment not resulting from distraint or levy or from a legal proceeding in which the Government seeks to collect delinquent taxes or file a claim therefor. See Amos v. Commissioner, 47 T.C. 65 (1966). If a taxpayer makes a voluntary payment without directing how that payment should be applied, the Service generally may make whatever allocation it chooses. See Estate of Baumgardner v. Commissioner, 85 T.C. 445 (1985).

Designations by taxpayers of voluntary payments should be accorded their ordinary meaning unless they are too ambiguous and uncertain to serve as directions to the

Service. See White v. United States, 43 Fed. Cl. 474 (1999). Verbal designations by taxpayers with respect to payments submitted to the Service are not effective. See Kinnie v. United States, 994 F.2d 279 (6<sup>th</sup> Cir. 1993).

The Internal Revenue Manual provides that if a taxpayer makes an undesignated payment and subsequently requests that the payment be moved to a different liability than the one to which it was first applied, the Service need not honor the request. See IRM 21.4.5.4.6.4.1.

In the present case, Taxpayer requested that the payment of \$e on April 15 of Year 2 be moved to a different liability than the one to which the Service first applied the payment (Year 1's estimated tax penalty). If the payment were an undesignated payment, the Service may properly have refused to move the payment to Year 2's estimated tax liability under the provisions of the manual. The Appeals Officer, however, determined that Taxpayer provided "clear evidence" that the \$e payment on April 15 of Year 2 was a designated payment of estimated tax for Year 2. In light of the Appeals Officer's findings, the Service may not treat the payment as an undesignated payment. Accordingly, the Service should treat the payment as an estimated tax payment for Year 2.

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Please call if you have any further questions.